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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMON TIMOTEO MUNOZ,

Defendant and Appellant.

F045408

(Super. Ct. No. BF104078A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Gary T. Friedman, Judge.

Patricia L. Watkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, and Charles A. French, Deputy Attorney General, for Plaintiff and Respondent.

* Before Vartabedian, Acting P.J., Harris, J. and Levy, J.

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STATEMENT OF THE CASE

On November 13, 2003, an information was filed in the Superior Court of Kern County charging appellant Ramon Timoteo Munoz with count I, felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)); count II, felon in possession of ammunition (§ 12316, subd. (b)(1)); and count III, misdemeanor possession of a gamecock implement (§ 597i). It was further alleged appellant served a prior prison term pursuant to section 667.5, subdivision (b). Appellant pleaded not guilty and denied the enhancement.

On January 5, 2004, appellant's jury trial began. On January 8, 2004, appellant was convicted as charged, and the court found the enhancement true.

On March 11, 2004, the court denied probation and imposed the midterm of two years for count I, plus a consecutive one-year term for the enhancement, for an aggregate term of three years. The court also imposed the midterm of two years for count II and stayed the term pursuant to Penal Code section 654, and imposed a concurrent term of 45 days in jail for count III but deemed the term served. The court awarded 66 days of actual credits and 32 days of custody credits, for a total of 98 days. The court ordered appellant to pay a \$200 restitution fine pursuant to section 1202.4, subdivision (b), and a \$200 restitution fine pursuant to section 1202.45, but stayed the payment of the section 1202.45 fine subject to the successful completion of parole. The court also ordered appellant to pay a \$20 fee pursuant to section 1465.8.

On April 26, 2004, appellant filed a timely notice of appeal.

FACTS

Around 5:20 p.m. on October 1, 2003, Kern County Sheriff's Deputy Drake Massey and his training partner, Deputy Shelly Fairbanks, responded to a duplex apartment on a dispatch about a possible violation of a restraining order. The deputies found several people standing around in the duplex's parking lot, including appellant Ramon Munoz and Jennifer Padilla. Appellant and Padilla were arguing about a

restraining order. She was angry and upset, and the situation was tense. The deputies separated the pair. They learned that Padilla called in the dispatch and claimed appellant violated a restraining order. They also learned appellant had been served with the restraining order just a few minutes before they arrived.

As the deputies discussed the situation, Padilla said appellant had a gun in the van which he was driving, and he had previously been arrested or convicted of a felony. Appellant was present when Padilla made this statement, and he replied, ““I have that to protect you guys,”” and gestured toward Padilla.

There were several cars and one van in the parking lot. The van was backed into a parking space, and a car was parked directly in front of it. Appellant was standing about 15 feet from the van. Deputy Massey asked appellant if he could search the van for the firearm, and appellant said yes.

Deputy Massey opened the van’s rear cargo door and observed several bags of clothing. He also found a cloth gun case which contained a .30-caliber carbine rifle, and a detached magazine loaded with 20 rounds of live ammunition. The deputies did not attempt to lift fingerprints from the rifle or the ammunition.

Deputy Fairbanks advised appellant he was being arrested for being an ex-felon in possession of a weapon. Appellant spontaneously said: ““I didn’t have it on me. It’s not mine. I didn’t have it on me.”” Appellant repeatedly said he didn’t have the gun on him, and he just wanted to leave the area. Appellant was searched. He possessed a camera case which contained two gamecock-fighting knives.

After appellant was taken to the jail, Deputy Fairbanks contacted him and advised him of the warnings pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). Appellant said he understood his rights, and again said he just wanted to leave the duplex that evening. Fairbanks asked about the gun. Appellant replied the gun belonged to his friend, Joe Ramirez. The gun had been in Padilla’s apartment but he moved it into the van “[j]ust to get rid of it.” Appellant said that guns are ““only used for home

protection,”” and he only had the gun ““to protect my family.”” Appellant never claimed he didn’t know about the gun, or that he didn’t know it was in the van. Appellant admitted he was previously convicted of a felony and knew he wasn’t supposed to possess firearms.

At trial, Deputy Massey testified he could not remember if the van was locked or who had the keys, but he released the vehicle to Padilla after appellant was arrested. Appellant did not possess any keys when he was arrested and no one gave the deputies any keys. There was nothing in the van which showed appellant owned it and the deputies never saw appellant in the van. The deputies did not determine the registered owner of the van or if appellant owned it. The rifle was not registered.

James Vasquez, appellant’s friend, testified appellant had been staying with him for a few weeks before he was arrested. On that particular day, Vasquez drove appellant to the duplex and dropped him off because appellant wanted to collect his belongings from the apartment he used to share with Padilla. Vasquez was going to return later to pick up appellant and his things. There were two vans in the parking lot. One was tan and the other was blue. Vasquez previously had seen appellant use the blue van, and believed the van belonged to appellant. Both appellant and Padilla used the blue van, but appellant did not use the van after he left Padilla and lived with Vasquez.

Appellant testified he lived with Padilla for seven years and they had a child. He moved out of Padilla’s apartment about two weeks before the incident, and stayed with James Vasquez. On that particular day, Vasquez dropped him off at the duplex because he wanted to pick up the rest of his belongings. No one was home and he didn’t have a key, so he decided to wait outside. He planned to call Vasquez to pick him up after he collected his possessions. After a few minutes, Padilla arrived with her father and some friends, and they handed him a restraining order. Appellant and Padilla argued about her new boyfriend and his new girlfriend.

Appellant testified that when the deputies arrived, Padilla said that he violated the restraining order and he had a gun. Appellant just wanted to leave because he knew the restraining order wasn't valid. Appellant testified Padilla repeatedly told the deputies that he had a gun in the van, and she handed the keys to the deputies. Appellant testified he never responded to Padilla's accusation and never was asked his side of the story. Instead, he was escorted to the patrol car, and watched as the deputies opened the van's back door and removed the gun.

Appellant testified the blue van belonged to Padilla, and he used it a few times when they lived together. He didn't have a key to the van, and he never used it after he moved out of the apartment. Appellant testified he recognized the gun because Padilla kept it in the top of her bedroom closet. He never touched the gun or put it in the van. Appellant denied making any comments to the deputies at the scene. On cross-examination, he admitted that he repeatedly told the deputies that it wasn't his gun.

Appellant testified he was advised of the *Miranda* warnings in the police car, as he was being taken to the jail, and he said he didn't know who the van belonged to and didn't know anything about the gun. Appellant also told the deputies that "[g]uns are for home protection," but he didn't mean that particular gun. Appellant testified he never put the gun in the van and the weapon belonged to Padilla.

DISCUSSION

Appellant's appointed counsel has filed an opening brief which adequately summarizes the facts and adequately cites to the record, which raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) By letter of August 23, 2004, this court invited appellant to submit additional briefing and state any grounds of appeal he may wish this court to consider.

On September 3, 2004, appellant asked this court to consider whether juror misconduct occurred. Appellant stated that when the verdicts were read, a juror was crying and refused to speak to the public defender. Appellant argued the juror's actions

indicated juror misconduct may have occurred and the prosecutor failed to investigate the matter.

Appellant's letter refers to a matter which defense counsel fully investigated pursuant to several posttrial motions and hearings. On January 8, 2004, appellant was convicted as charged. On January 14, 2004, counsel filed a posttrial motion for disclosure of juror identifying information based on an incident which occurred when the jury was polled. When Juror No. 1 was asked to affirm the verdict, the juror responded "'yes'" and began to cry. After the jury was discharged, defense counsel followed Juror No. 1 and asked if he/she was alright, and if they could talk about what happened with other jurors. Juror No. 1 "was nearly running out of the courthouse shouting 'there [sic] coming I have to go' as [he/she] turned around looking at the other jury members coming down the escalator." Juror No. 1 left the courthouse and defense counsel was not able to speak with him/her. Based on this incident, counsel requested the identifying information for all the jurors to investigate possible juror misconduct.

On January 16, 2004, the prosecution filed opposition and asserted appellant failed to satisfy the statutory requirements for disclosure of juror information.

On January 22, 2004, the court found appellant made a prima facie showing to obtain the requested information as to Juror No. 1. The court ordered Juror No. 1 to receive notice of the pending motion and his/her right to object to the requested disclosure.

On February 18, 2004, the court noted Juror No. 1 had not objected to the pending motion. The court granted the motion for disclosure of identifying information as to Juror No. 1.

On March 11, 2004, the court asked defense counsel whether he had contacted the juror. Defense counsel replied an investigator spoke to Juror No. 1.

"[The juror] ... indicated to us that [he/she] was comfortable with the verdict. [¶] [The juror] was just basically an emotional person. [He/she]

thought it was a three-strikes case, thought [appellant] was facing 25-to-life, and those were part of the reasons why [he/she] was tearful during the verdict. It wasn't that [he/she] was not –[he/she] felt comfortable with the verdict, basically.”

Defense counsel withdrew any pending issues regarding the matter. The record thus reflects defense counsel fully investigated this issue and concluded there was no evidence of juror misconduct.

Our independent review discloses no reasonably arguable appellate issues. “[A]n arguable issue on appeal consists of two elements. First, the issue must be one which, in counsel’s professional opinion, is meritorious. That is not to say that the contention must necessarily achieve success. Rather, it must have a reasonable potential for success. Second, if successful, the issue must be such that, if resolved favorably to the appellant, the result will either be a reversal or a modification of the judgment.” (*People v. Johnson* (1981) 123 Cal.App.3d 106, 109.)

DISPOSITION

The judgment is affirmed.